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PACIFIC TELESIS
Group-Washington

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June 14, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: *CC Docket No. 94-54, Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*

On behalf of Pacific Telesis Mobile Services and Pacific Bell Mobile Services, please find enclosed an original and six copies of their *"Comments"* in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Alan F. Ciamporcero

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Docket No. 94-54
Pertaining to	)	
Commercial Mobile Radio Services	)	
	)	

COMMENTS OF PACIFIC TELESIS MOBILE SERVICES AND PACIFIC BELL MOBILE SERVICES

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Date: June 14, 1995

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SUMMARY

In the Second Notice of Proposed Rulemaking the Commission makes tentative conclusions about the interconnection, roaming, and resale obligations of Commercial Mobile Radio Service providers. We are in general agreement with the tentative conclusions on interconnection and resale. However, we disagree with the tentative conclusion about roaming.

The Commission tentatively concluded that no regulatory action is required at this time. However, the ability to roam is a critical aspect of wireless service offerings and is necessary for PCS to compete with cellular which has been providing service for a decade. Cellular providers may seek to exploit the ubiquity they offer by refusing to enter into roaming agreements with their new competitors. If that happens, the competition with cellular the Commission wants won't develop.

Other PCS providers could provide roaming but many of the PCS auction winners are affiliated with cellular providers. Therefore, for the same competitive reasons, they may decline to enter into roaming agreements. Additionally, parties won't make the investments necessary for roaming -- such as developing dual-mode, dual-band handsets -- unless there is an assurance of the ability to obtain the contractual agreements necessary for roaming to take place.

Consequently, we strongly urge the Commission to reconsider its position on roaming and mandate that 1) PCS providers have fair and non-discriminatory access to cellular out-of-territory networks at any time and to cellular in-territory networks during the 10 year build-out period, and 2) PCS providers have fair and non-discriminatory access to out-of-territory PCS networks. This requirement will increase competition in wireless services.

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COMMENTS OF PACIFIC TELESIS MOBILE SERVICES AND PACIFIC BELL MOBILE SERVICES

Pacific Telesis Mobile Services ("PTMS") and Pacific Bell Mobile Services ("PBMS") hereby file comments in response to the Second Notice of Proposed Rulemaking in the above captioned proceeding concerning the interconnection, roaming, and resale obligations of Commercial Mobile Radio Service ("CMRS") providers.[1]

I. Interconnection

The Commission tentatively concludes that at this stage in the development of the CMRS industry the imposition of a general interstate interconnection obligation on all CMRS providers is premature.[2] The Commission goes on to note, however, that as common carriers, CMRS providers are subject to sections 201, 202 and 208 of the Communications Act,[3] and that these sections provide a basis for imposing interconnection requirements should they prove to be

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1 In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rulemaking, released April 20, 1995 ("Second NPRM").

2 Second NPRM, para. 29.

3 Id. at para. 38.

necessary. Finally, the Commission tentatively concludes that a market power analysis should be the basic analysis in determining whether to impose specific interconnection obligations.[4]

The Commission declined to initiate a notice and comment rulemaking aimed at developing rules of general applicability regarding CMRS-to-CMRS interconnection at this time. We agree. The Section 208 complaint process provides a sufficient vehicle for the Commission to monitor issues relating to CMRS-to-CMRS interconnection.

Given the rapidly developing technologies, it is difficult to ascertain the technical limitations on CMRS-to-CMRS interconnection. For example, at this time interconnection between different PCS technologies would be technically difficult to resolve and would require very expensive solutions. However, we continue to believe that interconnectivity of mobile communications promotes the public interest because it enhances greater flexibility in communications and makes services more attractive to consumers. Therefore, we urge the Commission to evaluate carefully complaints regarding the denial of interconnection of services that are technically capable of interconnection.

We agree with the Commission that a market power analysis should be the basic analysis conducted in determining whether a specific interconnection obligation should be imposed between the parties. Therefore, any requirement to interconnect, even when technically feasible, should only arise after a market power analysis supports a need for interconnection.

The Commission also requests comment on whether it should consider the role of LEC investment in CMRS providers in determining the reasonableness of a denial of

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[4] Id. at para. 41.

interconnection.[5] We do not think that LEC investment or affiliation with a CMRS provider alone provides any indication that denial of interconnection was motivated by anticompetitive purposes. The proper analysis should always be whether the relevant market is competitive.

II. Roaming.

As the Commission explains, "'roaming' describes the situation which occurs when the subscriber of one CMRS provider enters the service area of another CMRS provider with whom the subscriber has no pre-existing service or financial relationship, and attempts to continue an in-progress call, to receive an in-coming call, or to place an out-going call."[6] The Commission tentatively concludes that no regulatory action is required at this time.[7]

We disagree. The Commission should mandate that PCS providers have fair and non-discriminatory access to cellular out-of-territory networks at any time and to cellular in-territory networks during the 10 year build-out period. The requirement imposed on cellular licensees should make clear that cellular licensees are required to provide the same functionality to PCS providers that they provide to cellular roamers on the same terms and conditions. This will help new PCS entrants compete against cellular companies and meet the Commission's goal of competitive delivery. New providers will be able to grow their customer base yet have strong incentives to build out their networks with the expiration of in-region roaming after 10 years.

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5 Id. at para. 44.

6 Id. at para. 45.

7 Id. at para. 56.

The Commission notes that Section 22.901 of its rules may cover PCS subscribers that roam on cellular service areas.[8]

> This is the case ... because a PCS subscriber using a hand-set capable of transmitting and receiving communications on cellular frequencies (dual-band or dual-mode) will appear to the visited cellular system like a cellular subscriber once the dual-mode PCS phone switches to its cellular mode. Because the cellular system would be unable to distinguish the transmissions received from PCS phones from those received from cellular phones, it would automatically serve the PCS subscriber, assuming the requisite connections and contractual arrangements between the carriers were in place.

The critical element here is "assuming the requisite connections and contractual arrangements are in place." Section 22.901 is of no assistance in promoting roaming unless cellular providers have an obligation to enter into contractual arrangements with PCS providers to provide roaming under the same terms and conditions they provide roaming to other cellular providers and customers.

The Commission acknowledges that "roaming capability is an increasingly important feature of mobile telephone communications."[9] We strongly agree. Market research and customer experience reveal that customers demand to use their wireless telephone wherever they go. As cellular networks have expanded across the nation, seamless national "roaming" service has become available to cellular customers. The ability to roam is essential to public acceptance of PCS and to its competitiveness with cellular service. Without the ability to roam, PCS providers initially will only be offering an "island" service which customers will compare very unfavorably with cellular service. PCS providers, however, may not be able to offer the

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[8] Id. at para. 57.

necessary ubiquity that will permit true competition with cellular service when they first offer their service.

There are two reasons for this initial lack of ubiquity. First, PCS providers will take several years to complete their wide area network construction. During this phase, unless they are able to roam on existing cellular systems, PCS providers will not be able to ensure ubiquitous service to their customers, resulting in limited public acceptance of PCS. Secondly, a competitive consortium of cellular companies might create a "blockage" to roaming out-of-territory. A consortium may choose not to accommodate roaming customers from a PCS provider with which they compete in the PCS provider's licensed service area market. It could be to the consortium's economic advantage to damage a PCS provider's competitive position in its home territory by limiting the PCS provider's roaming options out-of-territory. Cellular companies will have an advantage if PCS provides only "islands of coverage." Cellular carriers clearly understand this potential market disadvantage that PCS providers may have. For example, Lee Cox, President of AirTouch, "estimated that it will take PCS carriers seven or eight years to deploy networks as ubiquitous as cellular and by that time cellular carriers will have improved their networks even further."[10]

When cellular service was introduced into the marketplace, roaming was easily achievable for two reasons. First, there was one technical standard for the delivery of cellular service, so there were no significant technical barriers to roaming. Second, there was no competition for cellular wireless mobile services. Thus, it was in the cellular providers' best

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[9] Id. at para. 54.

[10] Charles F. Mason, AirTouch Execs Say PCS Will Play Small Role, Telephony, April 18, 1994, at 12.

interest to enter into roaming agreements to create a ubiquitous service. Roaming would only enhance their service offerings. Cellular carriers provided access to their networks in order to gain reciprocal roaming agreements. However, as noted above, the current market in wireless provides a great incentive for existing cellular carriers to try to maintain their head start and to delay a ubiquitous PCS offering for as long as possible. That is why a mandate to enter into roaming agreements is critical.

We also support a requirement that PCS licensees be required to offer roaming agreements on reasonable terms and conditions to other PCS licensees outside of the latter's territory. Although PCS licensees will initially lack the ubiquity that cellular providers have, they may still offer a means to expand the coverage for other PCS licensees. PCS licensees using the same PCS technology would make especially attractive roaming partners. Again, without a mandate such agreements may not occur. Many PCS licensees are associated with companies that have cellular holdings. Thus, for the same competitive reasons noted, they may decline to enter into roaming agreements.

There are difficult technical issues to resolve regarding roaming onto non-technically compatible systems such as analog cellular and PCS, for example, the development of dual-mode, dual-band handsets. Many of these difficulties can probably be resolved with sufficient investment. Currently, there is no incentive to make the investment that would allow for seamless roaming to occur because the party seeking to roam has no assurance that it will be able to make the necessary contractual arrangements to implement roaming.

The status quo does not benefit the public for two reasons: (1) the ability of PCS providers to offer a service truly competitive with cellular is impaired; and (2) investment in technology to increase the compatibility of wireless systems is discouraged. We urge the Commission to reconsider its decision and mandate the roaming we have requested.

III. Resale

The Commission tentatively concludes that the existing obligation on cellular providers should apply to CMRS providers unless a showing is made that permitting resale would not be technically feasible or economically reasonable for a specific class of CMRS providers.[11] The Commission also tentatively concludes that the resale obligation should be imposed as a condition of the license.[12]

We have no objection to imposing a resale obligation as a condition of the license. However, there are differences between the licensing of PCS and cellular services. Therefore, the same resale requirement as cellular should not be imposed on PCS.

Under the cellular resale regulations, a facilities-based cellular licensee has a limited obligation to resell its service to its facilities-based competitor.[13] The requirement that the facilities-based licensees provide resale capacity to each other was established to offset any competitive advantage one carrier may have because it was granted a construction permit prior to its competitor. The Commission later limited the resale requirement between facilities-based providers[14] to the five year fill-in period. In the NPRM proposing this rule change the

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[11] Second NPRM, para. 83.

[12] Id.

[13] In the Matter of Petitions for Rulemaking Concluding Proposed Changes to the Commission's Cellular Resale Policies, Report and Order CC Docket No. 91-33, release June 8, 1992, para. 5, ("Cellular Resale Order").

[14] Id. at para. 27.

Commission explained that eliminating this resale requirement between facilities-based carriers once the second carrier in the market is fully operational

> 1) promotes the maximum amount of competition between two facilities-based carriers in the market; 2) promotes the Commission's goal of establishing nationwide availability of cellular systems by encouraging carriers to build out their systems; 3) encourages the fullest possible utilization of radio spectrum allocated to cellular service; 4) discourages the carrier requesting resale from its competitor from permanently relying on its competitor's facilities and efforts.[15]

In the area of PCS licenses, since all the licenses are to be auctioned off within a relatively short time of each other, there is no significant "head-start" that supports requiring that PCS licensees serving the same territory resell each other's services while they are building out their own networks. Moreover, the lack of such a resale requirement will encourage licensees to meet their build-out requirements as quickly as possible and will promote maximum competition. Consequently, it is in the public interest not to require resale of PCS services among licensees serving the same territory. However, if a headstart issue arises because there is a significant delay between the licensing of the different broadband frequency blocks we would support resale of PCS services among licensees serving the same territory for a period equivalent to the delay experienced by the later entrants.

That period would be measured from the close of the A and B block auctions to the close of the final auction for any of the broadband PCS licenses. Licensees could then resell the in-region PCS facilities-based providers' services for a length of time equal to the "headstart" period determined by the formula in the prior sentence. This is a reasonable time to mitigate any

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[15] Cellular Resale Order, para. 10.

headstart advantage because a licensee can reasonably be expected to begin developing its network after it wins a license at auction.

On the other hand, it is in the public interest for there to be unlimited resale of PCS services by non-licensees. The Commission has found that a strong resale market for cellular service fosters competition.[16] There is no reason to believe otherwise with respect to other CMRS services. Reselling by non-licensees will provide competition. Consequently, the only resale restriction that we support is that licensees should not be required to resell services to other licensees of the same service in the same territory unless there is a significant headstart issue.

The Commission tentatively concludes that the ability to resell other CMRS services by new facilities based carriers such as PCS may "'jump-start' competitive entry of PCS into the CMRS marketplace."[17] We agree.

There should be no such restriction on cellular resale by CMRS licensees. If a PCS licensee also desires to resell cellular service, it simply adds to the competitive market for CMRS in that service territory which is in the public interest. Cellular providers have an enormous head-start in comparison with other CMRS providers. There is no reason to insulate them from this type of competition. However, upon expiration of the 10-year build-out period, the obligation to permit in region PCS licensees to resell cellular service should expire. This

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16 In the matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services 9 FCC Rcd 5408, para. 138 (1994)

17 Second NPRM, para. 88.

sunset provision is consistent with expiration of a resale obligation between facilities-based cellular providers upon expiration of the fill-in period discussed in the previous section.

The Commission cites to Allnet's argument that if it is more profitable for a new entrant to resell rather than invest, this is not necessarily an uneconomic outcome or contrary to the public interest.[18] The Commission asks if it should rethink the advisability of allowing limitations of resale to facilities-based competitors based on Allnet's arguments.

Parties can enter the market as either facilities-based licensees or as resellers. If they choose to come into the market as the former they have an obligation to build-out their networks. They should not be permitted to rely on the resale of their competitors' services. As we noted above, resale among facilities-based competitors serving the same geographic territory should only be permitted if there is a significant headstart issue.

IV Reseller Switch

Although the reseller's switch proposal advanced by the National Cellular Resellers Association ("NCRA") and ComTech/CSI was addressed to the cellular industry, the Commission restates it to apply to CMRS providers in general. "We tentatively conclude that the reseller switch proposal espoused by NCRA and ComTech/CSI in this proceeding should not be generally imposed upon CMRS providers at this time."[19] We agree.

Unbundling is a concept associated with a market that has a dominant or monopoly player. As the Commission notes, the market for CMRS is highly competitive. Each

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[18] Second NPRM, para. 91.

[19] Id. at para. 95.

geographic area has two cellular providers and up to six broadband PCS providers and possibly wide-area SMR providers. Consequently, there is no reason to force an unbundling of CMRS networks based on a bottleneck theory.

The Commission correctly recognizes a mandatory switch-based resale policy "might impose costs on the Commission, the industry and consumers."[20] Implementation of an unbundling requirement would impose very significant administrative costs on the Commission and in the area of PCS would unquestionably raise the cost of service. The only beneficiaries of such a proposal would be a limited number of resellers who want to have their cake and eat it too. Any allowance for a hybrid form of reseller that permits attachment of limited facilities to the licensee's network unfairly penalizes the licensees that have paid a large amount for the license and must meet build-out requirements. If resellers want to be facilities-based providers, then they can bid for spectrum too. CMRS is a competitive market and it should consist of facilities-based licensees and resellers. We strongly urge the Commission to retain its tentative conclusion with respect to the reseller switch concept.

V. CONCLUSION

We generally support the Commission's conclusions with respect to interconnection and resale with the exceptions noted above. However, we respectfully request that the Commission reconsider its tentative decision with respect to roaming. As we explained in the foregoing, cellular providers should be required to negotiate roaming agreements with PCS providers to provide the same seamless roaming on the same terms and conditions that cellular

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[20] Second NPRM, para. 96.

providers receive. This mandate should apply to access to cellular out-of-territory networks at any time and to cellular in-territory networks during the ten year build out period. In addition, PCS providers should be required to enter into roaming agreements with other out-of-territory PCS providers.

Respectfully submitted,

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